

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1931 OF 2005

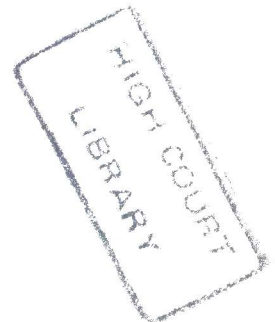
BETWEEN:

PETER MPONDA.....PLAINTIFF

and

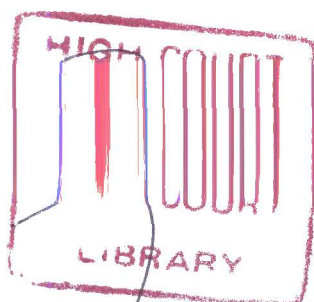
MALAWI REVENUE AUTHORITY.....DEFENDANT

CORAM: HON. JUSTICE A.C. CHIPETA
 Chalamanda, of Counsel for the Plaintiff
 Ngutwa, of Counsel for the Defendant
 Mdala, Official Interpreter



RULING

On 8th July 2005, alongside issue of a specially endorsed Writ in this action, this Court also issued an ex-parte Summons for an order of injunction. The sought after Order of Injunction was in fact granted and issued that same day. It forbade the Defendant, whether by itself or through its servants and/or agents from continuing to detain a Toyota Corrolla registered No. MC 1593 and required the Defendant to forthwith release the same to the Plaintiff. The order was to remain valid either until further order or until the determination of the main action.



Three days later i.e. on 11th July, 2005, the Defendant approached the Court with its own ex-parte application. Its prayer was that the Injunction Order earlier granted be stayed pending the redetermination of the same injunction issue, but on an inter partes hearing. In the light of the fact that the injunction order so earlier granted was mandatory in nature, and also in the light of the rules of the Court requiring, almost inevitably, that, where such type of order issues the Court should first benefit from hearing both sides, the stay requested herein was granted. The Plaintiff was then via this order given fourteen days within which, in lieu of his earlier ex-parte application, to lodge an inter partes Summons for injunction.

In actual fact the Plaintiff's reaction to this order was quite prompt. Right the next day he filed the required inter-partes Summons and secured 15th July, 2005 as the date for its hearing. The two affidavits, supported by exhibits, the Plaintiff had earlier employed in his ex-parte application were adopted for use in this fresh application. Fresh skeleton arguments, enriched with supply of case authorities, were in addition filed with the Court. In its turn the Defendant filed an affidavit it labeled to be in support, which in fact was/is in opposition to the grant of the order the Plaintiff was praying for. The Defendant, likewise also, filed skeleton arguments and statutory as well as case authorities, to buttress its views on the application at hand. I must here openly acknowledge with appreciation the efforts learned Counsel for both the parties have engaged in, in trying to ease my burden in deciding this case.

The facts of this case, as clearly disclosed by the evidence so far filed in the application, are that the Plaintiff, Mr Peter Mponda, is the current title holder and owner of the car in issue herein. He himself, apparently, so acquired this car from a Mr Charles T.D. Matabwa sometime in September, 2004. On 28th June, 2005, per exhibit "PM3" of the Plaintiff's affidavit in support, officers of the Malawi Revenue Authority seized the car in question from the Plaintiff, pending his production of Customs Clearance Papers within seven days. The Plaintiff found it unreasonable that the Defendant should seize this car from him and demand its clearance documents from him, when it had been imported into Malawi years back by someone other than him. It is this belief that led the Plaintiff into taking the present steps to challenge the seizure and detention of his car, and to seek a mandatory injunctory order for its return to him.

Having read all the affidavits and the documentary exhibits in the matter, together with all the skeletal arguments that have been filed, after hearing learned Counsel for the two sides present the application, it strikes me that the arguments presented in this case have run along two parallel lines. On matters of this sort it has been traditional, among other legal provisions, to link the decision of the Court to its true construction of Section 91 of the Customs and Excise Act (Cap 42:01) of the Laws of Malawi. In this regard the decision of Hon. Justice Tembo (as he then was) in Miscellaneous Civil Cause No. 89 of 2002 The State and the Commissioner General of the Malawi Revenue Authority, ex-parte Chipiliro Phiri Anganile, did quite a thorough job of interpreting the law. Indeed the Plaintiff's arguments, in large measure, proceed on the lines represented by this authority and the subsequent Court decisions that followed in its footsteps.

As against this the Defendant has made reference to and supplied to the Court a copy of Act No. 11 of 2003, being the Customs and Excise (Amendment) Act, 2003. I notice that by Section 8 of this Act on 8th September, 2003 Section 91 of the Principal Act, as it had hitherto existed, was deleted and replaced with a new version of that Section. In particular under Sub-Section (1) of this new Section 91 the law now provides:

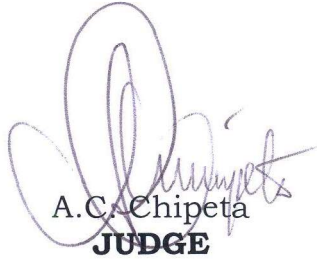
“(1) where any amount of duty has been underpaid, the person who should have paid such duty or the person in whose possession the goods in respect of which the underpayment was made shall pay such outstanding amount.”

Clearly, unlike the earlier version of this Section, presently the law extends the obligation to pay any shortfalls in the payment of duty on imported items to the person in possession of such property, over and above the importer himself. In the light of this new development in the law, argument that it is unlawful to pester a subsequent holder of property in place of chasing the importer would no longer hold any water.

It all in all therefore does appear to me that in pursuit of the Defendant's statutory functions, in event of concerns regarding the duty attaching to the car MC 1593 arising, the Defendant has a legally sanctioned choice whether to pursue the original importer, or to settle its concerns with the present owner and title holder. The Defendant, I apprehend, cannot, in the premises, be restrained by Order of Injunction from so performing its legal duty. Act No. 11 of 2003 has been scarce and I am surprised that for an Act that is almost two years old now this

is the first time it has been referred to in arguments before my Court. In the circumstances the application of the plaintiff for a mandatory Order of Injunction to restrain the Defendant from further detaining his motor vehicle MC 1593, and to compel immediate release of the same cannot succeed. I therefore dismiss it with costs as well as discharge the ex-parte order that was stayed pending the present determination.

Made in Chambers the 12th day of August, 2005 at Blantyre.



A.C. Chipeta
JUDGE